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H. R. 952

To prohibit the transfer or return of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2005

Mr. MARKEY (for himself, Mr. FILNER, Mr. OWENS, Mr. FRANK of Massachusetts, Mr. LEWIS of Georgia, Ms. SCHAKOWSKY, Mr. GRIJALVA, Mr. HONDA, Ms. MCCOLLUM of Minnesota, Mr. KUCINICH, Mr. HINCHEY, Mr. LANTOS, Mr. PASTOR, Mr. SERRANO, Mr. McDERMOTT, Mr. BLUMENAUER, Mr. MCGOVERN, Mr. SANDERS, Mr. GEORGE MILLER of California, Mr. HOLT, Mr. OLVER, Mr. STARK, Mrs. DAVIS of California, Ms. LEE, Ms. WOOLSEY, Mr. WAXMAN, Mr. SABO, Mr. DOGGETT, Mr. CONYERS, Mr. TIERNEY, Mr. ALLEN, Mr. DAVIS of Illinois, Mrs. MALONEY, and Ms. MILLENDER-McDONALD) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To prohibit the transfer or return of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Torture Outsourcing
3 Prevention Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The Universal Declaration of Human
7 Rights states that “No one shall be subjected to tor-
8 ture or to cruel, inhuman, or degrading treatment or
9 punishment.”.

10 (2) The United Nations Convention against
11 Torture and Other Cruel, Inhuman or Degrading
12 Treatment or Punishment (in this Act referred to as
13 the “Convention against Torture”) defines torture
14 as “any act by which severe pain or suffering,
15 whether physical or mental, is intentionally inflicted
16 on a person for such purposes as obtaining from him
17 or a third person information or a confession. . . .”,
18 and which may be “inflicted by or at the instigation
19 of or acquiescence of a public official or other person
20 acting in an official capacity.”.

21 (3) Article 4 of the Convention against Torture
22 obligates State parties to ensure that all acts of tor-
23 ture are criminal offenses under domestic legislation,
24 and current United States law, under section 2340A
25 of title 18, United States Code, makes torture a
26 crime when committed outside of the United States.

1 (4) Article 3 of the Convention against Torture
2 expressly prohibits sending a person to another
3 State “where there are substantial grounds for be-
4 lieving that he would be in danger of being subjected
5 to torture.” It further provides that in making such
6 determinations, governments must take into account
7 the existence of “a consistent pattern of gross, fla-
8 grant, or mass violations of human rights.”.

9 (5) In order to discourage the use of torture in
10 interrogation, Article 15 of the Convention against
11 Torture requires all state Parties to “ensure that
12 any statement which is established to have been
13 made as a result of torture shall not be invoked as
14 evidence in any proceedings”.

15 (6) The prohibition on torture and other ill
16 treatment has been incorporated into the numerous
17 international and regional human rights treaties, in-
18 cluding—

19 (A) Article 7 of the International Covenant
20 on Civil and Political Rights (ICCPR), ratified
21 by 154 countries, including the United States in
22 1992;

23 (B) the Convention against Torture, rati-
24 fied by 139 countries, including the United
25 States in 1994;

1 (C) the American Convention on Human
2 Rights;

3 (D) the European Convention for the Pro-
4 tection of Human Rights and Fundamental
5 Freedoms; and

6 (E) the African Charter on Human and
7 Peoples' Rights.

8 (7) The prohibition against torture and inhu-
9 mane treatment is also fundamental to the laws gov-
10 erning the conduct of parties in armed conflicts, as
11 enshrined in the Geneva Conventions of 1949 and
12 their Protocols, which establish a duty to protect the
13 life, health, and safety of civilians and other non-
14 combatants, including soldiers who are captured or
15 who have laid down their arms, prohibit "violence of
16 life and person, in particular murder of all kinds,
17 mutilation, cruel treatment, and torture", "outrages
18 upon personal dignity, in particular humiliating, and
19 degrading treatment", and prohibit the use of force
20 to obtain information, stipulating that "No physical
21 or moral coercion shall be exercised against pro-
22 tected persons, in particular to obtain information
23 from them or from third parties."

24 (8) The United States Government informed
25 the United Nations in 1999 that in the United

1 States, the use of torture “is categorically denounced
2 as a matter of policy and as a tool of state authority
3 . . . No official of the government, Federal, State,
4 or local, civilian, or military, is authorized to commit
5 or to instruct anyone else to commit torture. Nor
6 may any official condone or tolerate torture in any
7 form . . . Every act of torture within the meaning
8 of the [Convention against Torture] is illegal under
9 existing Federal and State law, and any individual
10 who commits such an act is subject to penal sanc-
11 tions as specified in criminal statutes.”.

12 (9) In the United States, the practice of torture
13 violates numerous provisions of the United States
14 Constitution and its Bill of Rights, including the
15 right under the Fourth Amendment to be free of un-
16 reasonable search or seizure, which encompasses the
17 right not to be abused by the police, the right under
18 the Fifth Amendment against self-incrimination,
19 which encompasses the right to remain silent during
20 interrogations, the guarantees of due process under
21 the Fifth and the Fourteenth Amendments, which
22 ensure fundamental fairness in criminal justice sys-
23 tem, and the right under the Eighth Amendment to
24 be free of cruel or unusual punishment.

1 (10) In numerous cases, the United States Su-
2 preme Court has condemned the use of force
3 amounting to torture or other forms of ill treatment
4 during interrogations, including such practices as
5 whipping, slapping, depriving a prisoner of food,
6 water, or sleep, keeping a prisoner naked or in a
7 small cell for prolonged periods, holding a gun to a
8 prisoner's head, or threatening a prisoner with mob
9 violence.

10 (11) Section 2242(a) of the Foreign Affairs Re-
11 form and Restructuring Act of 1998 (Public Law
12 105–277; 8 U.S.C. 1231 note) states that “It shall
13 be the policy of the United States not to expel, ex-
14 tradite, or otherwise effect the involuntary return of
15 any person to a country in which there are substan-
16 tial grounds for believing the person would be in
17 danger of being subjected to torture, regardless of
18 whether the person is physically present in the
19 United States.” . To do otherwise would violate our
20 obligations under Article 3 of the Convention against
21 Torture.

22 (12) Transferring, rendering, removing, return-
23 ing, or extraditing persons in the custody of the
24 United States to any other country where torture or
25 cruel, inhuman, or degrading treatment is commonly

1 used in the detention and interrogation of individ-
2 uals is inconsistent with international human rights
3 law, including various human rights treaties ratified
4 by the United States, the Constitutional protections
5 against torture or inhuman treatment, and the val-
6 ues and principles upon which the United States was
7 founded.

8 (13) Recent practices have weakened the safe-
9 guards under applicable laws, such as the procedures
10 under the immigration laws of the United States
11 governing removals from the United States, and per-
12 sons have been transferred from the custody of the
13 United States to that of other governments entirely
14 outside of any legal framework.

15 (14) It is critically important that all transfers
16 of individuals to other countries occur with full due
17 process of law and in conformity with the obligations
18 of the United States under article 3 of the Conven-
19 tion Against Torture.

20 (15) The reliance on diplomatic or other assur-
21 ances from a government that it will not torture or
22 ill-treat a person returned to that government is an
23 ineffective safeguard for protecting persons from
24 torture or ill treatment. Such assurances from a gov-
25 ernment known to engage in systematic torture are

1 inherently unreliable. There is strong evidence that
2 governments such as those of Egypt, Syria, and
3 Uzbekistan have violated such assurances they have
4 provided.

5 (16) The United Nation’s leading expert on tor-
6 ture, the Special Rapporteur on Torture, recently ex-
7 amined the practice of rendition in situations that
8 implicate the prohibition on returning persons to
9 countries where they may face torture. The Special
10 Rapporteur noted with concern that such practices
11 appear to be on the rise over the past 3 years. After
12 examining the growing use of diplomatic or other as-
13 surances described in paragraph (14), the Special
14 Rapporteur stated that such assurances may not be
15 used in circumstances where a country has a record
16 of “systematic practice of torture”. In such cases,
17 the individual’s right not to be subjected to torture
18 must be respected, and the individual may not be re-
19 turned to that country.

20 **SEC. 3. TRANSFER OF PERSONS.**

21 (a) **REPORTS TO CONGRESS.**—Beginning 30 days
22 after the date of the enactment of this Act and every 12
23 months thereafter, the Secretary of State shall complete
24 and submit to the appropriate congressional committees
25 a list of countries where there are substantial grounds for

1 believing that torture or cruel, inhuman, or degrading
2 treatment is commonly used in the detention of or interro-
3 gation of individuals. The list shall be compiled on the
4 basis of the information contained in the most recent an-
5 nual report of the Secretary of State submitted to the
6 Speaker of the House of Representatives and the Com-
7 mittee on Foreign Relations of the Senate under section
8 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C.
9 2151n(d)).

10 (b) PROHIBITION ON TRANSFERRING PERSONS.—

11 Any person who is imprisoned, detained, or held for trans-
12 fer to another country by, or is otherwise in the custody
13 of, a department, agency, or official of the United States
14 Government, or any contractor of any such department
15 or agency, may not be transferred, rendered, or re-
16 turned—

17 (1) to a country included on the most recent list
18 submitted under subsection (a), for the purpose of
19 detention, interrogation, trial, or otherwise; or

20 (2) to any other country if there are substantial
21 grounds to believe that the person will be transferred
22 to a country included in the most recent list sub-
23 mitted under subsection (a).

24 (c) WAIVERS.—

1 (1) AUTHORITY.—The Secretary of State may
2 waive the prohibition contained in subsection (b)
3 with respect to the government of a country if the
4 Secretary certifies to the appropriate congressional
5 committees that—

6 (A) that government has ended the acts of
7 torture or cruel, inhuman, or degrading treat-
8 ment that were the basis for the inclusion of
9 that country on the list; and

10 (B) there is in place a mechanism that
11 assures the United States in a verifiable man-
12 ner that a person transferred, rendered, or re-
13 turned will not be tortured or subjected to
14 cruel, inhuman, or degrading treatment in that
15 country, including, at a minimum, immediate,
16 unfettered, and continuing access, from the
17 point of return, to each such person by an inde-
18 pendent humanitarian organization.

19 (2) ASSURANCES INSUFFICIENT.—Written or
20 verbal assurances made to the United States by the
21 government of a country that persons transferred,
22 rendered, or returned to the country will not be tor-
23 tured or subjected to cruel, inhuman, or degrading
24 treatment, are not sufficient to meet the require-
25 ments of paragraph (1)(B).

1 (d) TREATY-BASED EXTRADITION EXEMPTION.—(1)

2 The prohibition contained in subsection (b) shall not be
3 construed to apply to the legal extradition of a person
4 under a bilateral or multilateral extradition treaty if, prior
5 to such extradition, that person has recourse to a court
6 in the United States of competent jurisdiction to challenge
7 the extradition on the basis that there are substantial
8 grounds for believing that the person would be in danger
9 of being subjected to torture or cruel, inhuman, or degrad-
10 ing treatment in the country requesting such extradition.

11 (2) ASSURANCES INSUFFICIENT.—Written or verbal
12 assurances made to the United States by the government
13 of a country that persons transferred, rendered, or re-
14 turned to the country will not be tortured or subjected
15 to cruel, inhuman, or degrading treatment, are not suffi-
16 cient basis for believing that the person would not be in
17 subjected to torture or cruel, inhuman, or degrading treat-
18 ment in the country requesting such extradition pursuant
19 to paragraph (1).

20 **SEC. 4. IMPLEMENTATION OF OBLIGATION NOT TO RE-**
21 **TURN TO RISK OF TORTURE.**

22 (a) IN GENERAL.—Section 2242 of the Foreign Af-
23 fairs Reform and Restructuring Act of 1998 (8 U.S.C.
24 1231 note) is amended by striking subsection (b) and in-
25 serting the following:

1 “(b) REGULATIONS.—

2 “(1) ISSUANCE.—Not later than 120 days after
3 the date of the enactment of the Torture
4 Outsourcing Prevention Act, the heads of the appro-
5 priate Government agencies shall prescribe regula-
6 tions to implement the obligations of the United
7 States under Article 3 of the United Nations Con-
8 vention Against Torture and Other Cruel, Inhuman
9 or Degrading Treatment or Punishment, subject to
10 any reservations, understandings, declarations and
11 provisos contained in the United States Senate reso-
12 lution of ratification of the Convention.

13 “(2) REQUIREMENTS OF REGULATIONS.—Regu-
14 lations issued by the head of an agency under para-
15 graph (1) shall set forth—

16 “(A) the responsibilities of the agency, its
17 employees, and its contractors to comply, both
18 within and outside of the United States, with
19 the obligations of the United States under Arti-
20 cle 3 of the Convention Against Torture re-
21 ferred to in paragraph (1); and

22 “(B) the process by which a person may
23 raise and adjudicate in an independent judicial
24 forum a claim that his or her transfer would be
25 in violation of Article 3 of the Convention

1 Against Torture referred to in paragraph (1),
2 including the process by which the individual
3 being transferred can challenge any diplomatic
4 or other assurances received from the govern-
5 ment to which the individual would be returned
6 that the individual will not be subjected to tor-
7 ture or ill treatment.

8 “(3) DEFINITION.—For purposes of this sub-
9 section, the term ‘appropriate Government agencies’
10 means the intelligence community (as defined in sec-
11 tion 3(4) of the National Security Act of 1947 (50
12 U.S.C. 401a(4))), the Departments of State, De-
13 fense, Homeland Security, and Justice, the United
14 States Secret Service, the United States Marshals
15 Service, and any other law enforcement, national se-
16 curity, intelligence, or homeland security agency
17 which imprisons, detains, or transfers prisoners or
18 detainees, or which otherwise takes or assumes cus-
19 tody of persons, or transfers persons to another
20 country.”.

21 (b) EXISTING REGULATIONS.—

22 (1) IN GENERAL.—The amendment made by
23 subsection (a) does not nullify any regulations issued
24 by an agency, before the effective date of this Act,
25 under section 2242(b) of the Foreign Affairs Reform

1 and Restructuring Act of 1998. In such a case, the
2 agency shall amend such regulations to comply with
3 the amendment made by subsection (a) of this sec-
4 tion.

5 (2) SPECIAL RULE CONCERNING IMMIGRATION
6 LAWS.—Notwithstanding any other provision of this
7 Act, or any amendment made by this Act, nothing
8 in this Act shall be construed to affect immigration
9 laws (as defined in section 101(a)(17) of the Immi-
10 gration and Nationality Act (8 U.S.C.
11 1101(a)(17))), or regulations issued pursuant to im-
12 migration laws, except that the Secretary of Home-
13 land Security, not later than 120 days after the date
14 of the enactment of this Act, shall revise the regula-
15 tions issued by the Secretary to implement section
16 2242 of the Foreign Affairs Reform and Restruc-
17 turing Act of 1998 (8 U.S.C. 1231 note) so as to
18 ensure that written or verbal assurances made by
19 the government of a country that a person in immi-
20 gration proceedings in the United States (including
21 asylum proceedings) will not be tortured or sub-
22 jected to cruel, inhuman, or degrading treatment if
23 the person is removed by the United States to the
24 country are not, standing alone, a sufficient basis
25 for believing that the person would not be tortured

1 or subjected to such treatment if the alien were re-
2 moved to the country.

3 **SEC. 5. SAVINGS CLAUSE.**

4 Nothing in this Act or the amendments made by this
5 Act shall be construed to eliminate, limit, or constrain in
6 any way the rights that an individual has under the Con-
7 vention Against Torture or any other applicable law.

8 **SEC. 6. EFFECTIVE DATE.**

9 This Act takes effect on the date that is 30 days after
10 the date of the enactment of this Act.

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